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the erroneous determination was not due to any fraudulent or negligent action of the biorefinery.

(5) A biorefinery or person receiving payment under this program will be liable for any refund or related charges associated with their project due under this program.

(e) *Remedies.* The remedies provided in this subpart will be in addition to other civil, criminal, or administrative remedies that may apply.

§ 4288.25 Succession and control of facilities and production.

Any party obtaining a biorefinery that is participating in this program must request permission to participate in this program as a successor. The Agency may grant such request if it is determined that, the party is eligible, and permitting such succession would serve the purposes of the program. If appropriate, the Agency will require the consent of the previous party to such succession. Also, the Agency may terminate payments and demand full refund of payments made if a party loses control of a biorefinery whose production of heat or power from renewable biomass is the basis of a program payment, or otherwise fails to retain the ability to assure that all program obligations and requirements will be met.

§ 4288.26 Fiscal Year 2009 and Fiscal Year 2010 applications.

Any entity that submitted an application for payment to the Agency under this program prior to March 14, 2011 will have their payments made and serviced in accordance with the provisions specified in this subpart.

§§ 4288.27–4288.100 [Reserved]

Subpart B—Advanced Biofuel Payment Program General Provisions

AUTHORITY: 5 U.S.C. 301.

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§ 4288.101 Purpose and scope.

(a) *Purpose.* The purpose of this subpart is to support and ensure an ex-

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panding production of advanced biofuels by providing payments to eligible advanced biofuel producers.

(b) *Scope.* This subpart sets forth, subject to the availability of funds as provided herein, or as may be limited by law, the terms and conditions an advanced biofuel producer must meet to obtain payments under this Program from the United States Department of Agriculture for eligible advanced biofuel production. Additional terms and conditions may be set forth in the Program contract and payment agreement prescribed by the Agency.

§ 4288.102 Definitions.

The definitions set forth in this section are applicable for all purposes of program administration under this subpart.

Advanced biofuel. A fuel that is derived from renewable biomass, other than corn kernel starch, to include:

- (1) Biofuel derived from cellulose, hemicellulose, or lignin;
- (2) Biofuel derived from sugar and starch (other than ethanol derived from corn kernel starch);
- (3) Biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste;
- (4) Diesel-equivalent fuel derived from renewable biomass, including vegetable oil and animal fat;
- (5) Biogas (including landfill gas and sewage waste treatment gas) produced through the conversion of organic matter from renewable biomass;
- (6) Butanol or other alcohols produced through the conversion of organic matter from renewable biomass; or
- (7) Other fuel derived from cellulosic biomass.

Advanced biofuel producer. An individual, corporation, company, foundation, association, labor organization, firm, partnership, society, joint stock company, group of organizations, or non-profit entity that produces and sells an advanced biofuel. An entity that blends or otherwise combines advanced biofuels into a blended biofuel is not considered an advanced biofuel producer under this Program.